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OFFICE OF PETITIONS

In re reissue Application of :
Debra J. Worsley, Michael T. :
Werstlein, and Richard W. Thaik : DECISION DISMISSING DECISION
Application No. 09/231,855 :
Filed: January 14, 1999 :
Attorney Docket No. VN734 :

This is in response to the renewed petition under 37 CFR 1.183, filed April 23, 2003, requesting a waiver of the requirement that all the inventors sign the supplemental reissue declaration.

The petition under 37 CFR 1.183 is GRANTED.

The above-identified reissue application was filed on January 14, 1999, without an executed declaration pursuant to 37 CFR 1.63. Accordingly, the Initial Patent Examination Division mailed a "Notice to File Missing Parts of Application" on February 25, 1999. In reply, applicant filed a declaration executed by all of the inventors on June 28, 1999. In a non-final Office action mailed on April 8, 2002, the Examiner required a supplemental declaration.

In reply, applicant filed an amendment on September 10, 2002. To make timely this reply, applicant included a Certificate of Mailing dated September 4, 2002 and obtained a two month extension of time. In addition, applicant filed a petition under 37 CFR 1.47 on October 9, 2002.¹ Accompanying the petition was a supplemental reissue declaration signed by joint inventors Debra J. Worsley and Michael T. Werstlein, but lacking a signature from joint inventor Richard W. Thaik.

37 CFR 1.67 states, in pertinent part:

(a) The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

¹ A petition under 37 CFR 1.47 only applies to the original oath or declaration. Here, applicant has already filed a declaration in compliance with 37 CFR 1.63 on June 28, 1999.

(1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47 may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

In addition, 37 CFR 1.175 states that a reissue declaration must be signed by all of the inventors.²

With the petition filed October 9, 2002, applicant set forth the steps taken to find joint inventor Thaik. Attorney Alan Loudermilk attested that he performed Internet searches, made calls to Thaik's past employer, and mailed letters to the two last known addresses of Thaik which were never returned.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

The supplemental reissue declaration was required to be signed by joint inventors Worsley, Werstlein, and Thaik. However, only Worsley and Werstlein executed the declaration. Petitioner has demonstrated that a *bona fide* effort was made to locate Thaik. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

However, the petition was dismissed in a decision mailed on April 2, 2003. The declaration did not comply with 37 CFR 1.63(a)(3) because it failed to identify the citizenship of Thaik. In addition, the declaration did not comply with 37 CFR 1.63(c)(1) because it did not identify the residence of Thaik.

On renewed petition, petitioner has submitted a supplemental reissue declaration identifying the citizenship and residence of Thaik.

The application file is being forwarded to Technology Center 2600 for consideration of applicant's amendment, filed September 10, 2002.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

Christina Lartera Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

² See also MPEP 114.01 (stating that a supplemental reissue oath or declaration in a broadening reissue must be signed by all the inventors).